香港申訴專員公署

Office of The Ombudsman, Hong Kong



# 主動調查報告
# Direct Investigation Report

## 地政總署對私人商場內的公共行人通道及公共室內廣場被用作商業用途的執管

## Lands Department's Enforcement against Commercial Use of Public Pedestrian Passages and Public Atria in Private Malls

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# Executive Summary
# Direct Investigation Report

## Lands Department's Enforcement against Commercial Use of Public Pedestrian Passages and Public Atria in Private Malls

### Introduction

The lot owners ("owners") of some private developments (including malls) are required under land lease ("lease") conditions to provide in their developments public pedestrian passages ("public passages") and/or public atria. The use of these public facilities is governed by lease conditions, which may stipulate, for instance, that no commercial activities be carried out within the public passages and atria.

### Our Findings

2. According to the operational guidelines of the Lands Department ("LandsD"), if a breach of lease is found, the District Lands Office ("DLO") concerned would issue a warning letter to the owner concerned and/or the management company appointed by the owner, demanding rectification of the breach before a specified deadline. Upon expiry of the deadline, DLO would conduct a compliance check within one to three weeks to confirm rectification of the breach or otherwise. Should the breach remain unrectified, DLO would register the warning letter at the Land Registry ("LR") and reserve the right to take further lease enforcement action, including, for cases with serious breaches (e.g. those that pose serious threats to public safety), re-entry of the lot or vesting of the relevant interest to the Government pursuant to the Government Rights (Re-entry and Vesting Remedies) Ordinance. For cases that fall within the ambit of other Government departments or where handling by other departments would be more appropriate, DLO may, in addition to taking lease enforcement action, refer them to the relevant departments for follow-up.

3. Our investigation has identified the following inadequacies and areas for improvement in LandsD's handling of the problem of unauthorised use of public passages and atria in private malls for commercial purposes ("the Problem").

***Enforcement***

(I) No or delayed enforcement

4. A case showed that DLO had found the Problem in a mall ("Mall B") during an annual inspection but did not take any enforcement action. It only issued a warning letter to the owner of Mall B upon finding the same problem ten months later during the annual inspection for the following year. In two other cases, DLOs only issued warning letters to the owners of the two malls in question ("Mall D" and "Mall A") more than four and five months respectively after finding the Problem. We note that LandsD has not specified in its operational guidelines the time limit for issuing warning letters after a breach is found. We consider that the Department should review the relevant guidelines and set a time limit for issuance of warning letters so that DLO staff can have an objective standard to follow for timely enforcement.

5. Besides, two cases showed that staff of DLOs conducted compliance checks at two malls with the Problem ("Mall B" and "Mall C") as late as two months and 81 days respectively after the deadline for rectification specified in the warning letters had expired. This far exceeded the normal time limit of one to three weeks for conducting a compliance check.

(II) Insufficient enforcement

6. In the case of Mall C, there were shop owners breaching the lease, thus constituting the Problem. For some of those shops, DLO issued warning letters to the shop owners only, but not to the owner of the mall at the same time. We are of the view that owners of malls should ensure that the public passages and/or atria in their malls are in compliance with lease conditions. It follows that in similar cases where the lease conditions are also applicable to shop owners in a private mall, DLO should also issue a warning letter to the owner of the mall.

(III) Failure to register warning letters at LR

7. LandsD's operational guidelines do not stipulate a time limit of when DLO should register a warning letter at LR upon finding that a breach remains unrectified. Two cases showed that DLOs, during compliance checks, found the Problems at Mall B and Mall C persisted but failed to register the warning letters at LR. As a result, the Problems lingered. We consider that LandsD should review its operational guidelines

to include a time limit for registering warning letters at LR, and to specify the time limit in the warning letter. This can heighten the awareness of DLO staff and provide them with an objective standard for taking further enforcement action, as well as exerting a greater deterrent effect on offenders.

(IV) Failure to refer suitable cases of breach to other relevant departments for follow-up

8. In the case of Mall A, some restaurants might have violated the provisions of the Food Business Regulations by extending their business areas to the public passages of the mall. Nevertheless, DLO never referred the case to the Food and Environmental Hygiene Department for follow-up. Fortunately, after we had raised queries about this, LandsD issued a memorandum in October 2018 to remind DLOs to follow the requirements of the operational guidelines and refer cases that fall within the ambit of other government departments for follow-up in parallel.

(V) Failure to proactively recover waiver fee from owners who have breached the lease

9. Under the current mechanism, owners of private malls who intend to hold commercial activities at public passages or atria provided under the lease should apply for a Short Term Waiver ("STW") from DLO. If approved, the STW would carry additional conditions stipulating, *inter alia*, that the owner must pay an administration fee and a wavier fee. If the owner of a mall applies for an STW only after the Problem in the mall has been found by DLO, the wavier fee payable would usually be dated back to the first day when DLO found the breach. If the owner of the mall does not apply for an STW even a breach has been found, DLO may take the initiative to recover the waiver fee, depending on the actual circumstances. DLOs can recover a waiver fee of up to six years.

10. During the five years between 2014/15 and 2018/19, LandsD found a total of 65 cases with the Problem. In only two of those cases, STWs were applied for after the Problems had been found, and in only one of those two cases did DLO take action to recover from the owner of the mall (Mall A) the waiver fee, which exceeded a hefty $24 million for a breach that had persisted for as long as five and a half years. We consider LandsD to have failed to make good use of its enforcement power to proactively recover waiver fees from owners of malls having the Problem. In the 60 odd remaining cases where no applications for an STW were ever submitted and where

LandsD took no action to recover any waiver fees, the waiver fees involved could easily be in the zone of hundreds of millions of dollars. LandsD should take serious action to recover waiver fees in order to exert deterrent effects, bringing in revenue for the Government coffers at the same time. It should take prompt/timely action to recover waiver fees for all known cases upon revisiting them, and for newly found cases.

(VI) Unclear enforcement objective and ineffective enforcement

11. LandsD's enforcement against the Problem has been lax. Besides, its measures for tackling the problem, such as registration of warning letters at LR, re-entry of the lot or vesting of the relevant interest to the Government in serious cases as well as recovery of waiver fees from the owners of malls, have all been ineffective in eradicating the Problem. On the other hand, LandsD allows owners to hold commercial activities at public passages and atria in their malls through application for an STW. It is not clear whether LandsD's policy objective is to strictly ban all forms of the Problem, or to permit owners of malls to hold commercial activities at public passages and atria through application for an STW.

12. This Office takes the view that LandsD should set a clear objective for its enforcement action against the Problem. If it considers that the Problem must be eradicated, it should devise practical and feasible enforcement measures with deterrent effects, such as adoption of more effective regulatory procedures, and consider specifying in the leases of future developments that once the Problem is found, DLO would not only recover the waiver fee, but also impose an additional administration fee. If LandsD considers that the Problem poses no threats to public interest, it should then find ways to regulate commercial activities at public passages and atria in private malls, such as regularisation of such activities.

***Information Dissemination***

(VII) Inadequate information provided to the public about public passages/atria in private malls

13. Information about private developments in which public passages and/or atria are provided under lease conditions is uploaded on LandsD's website. Such information is just brief text descriptions, not sufficient for members of the public to know the specific locations and areas of such public facilities and for them to monitor their use. In response to our comments on the inadequacy of the information being

provided, LandsD has sent letters to the owners or management companies of all the 118 private malls, suggesting that layout plans be displayed at the entrances/exits of the public passages/atria in their malls to show clearly the locations and routing of such facilities for public use. Besides, LandsD completed in December 2019 uploading on its GeoInfo Map website information about provision of public facilities (including public passages and/or atria) in private developments required under lease. More information (including photographs or videos) will be uploaded to that website so that the public can have a better idea about the locations and areas of such facilities.

**Recommendations**

14. In the light of the above comments, The Ombudsman recommends that LandsD:

***Enforcement***

(1) review relevant operational guidelines to stipulate the time limits for issuing warning letters and registering warning letters at LR. The time limit for registration should be clearly specified in warning letters;

(2) revisit as soon as possible all known and newly found cases with the Problem and take the initiative to recover promptly/in a timely manner waiver fees from the owners of the malls concerned;

(3) consider seeking legal advice on cases in which the Problem involving shop owners persists for determining whether warning letters can be issued to those owners;

(4) set a clear objective for enforcement action against the Problem and devise enforcement/regulatory measures for achieving the objective;

***Information Dissemination***

(5) follow up regularly with private malls concerning their implementation of the Department's suggestion that layout plans which show the locations and routing of public passages and/or atria in the malls be displayed at the entrances/exits of those facilities, and consider stipulating in the leases of new private developments (including malls)

that owners of the developments must display such layout plans at the entrances/exits of the public passages and/or atria in their malls;

(6) follow its schedule in uploading more information (including photographs or videos) about public passages/atria in private malls on the GeoInfo Map website to enhance transparency and public access to information; and

(7) upload regularly on the GeoInfo Map website information (including photographs or videos) about public passages/atria in new private developments (including malls).

**Office of The Ombudsman**
**January 2020**

# 1

# INTRODUCTION

## BACKGROUND

**1.1** Lot owners ("owners") of some private developments (including malls) are required under land lease ("lease") conditions to provide in their developments public pedestrian passages ("public passages") and/or public atria. The use of these public facilities are governed by lease conditions, which may stipulate, for instance, that no commercial activities shall be carried out within the public passages and atria, public passages shall be free of obstruction with no goods placed thereon, and public passages and atria shall be open for use by the public during specified hours.

**1.2** There were media reports about public passages and atria in malls being used for commercial purposes (e.g. for setting up sales booths, as business areas of restaurants and for placement of fee-charging children's play equipment). Some of those cases have been confirmed by the Lands Department ("LandsD") as having breached the relevant lease conditions. The public has also expressed concern over the problem to this Office.

## SCOPE AND PROCESS OF INVESTIGATION

**1.3** Against this background, The Ombudsman initiated a direct investigation on 25 July 2018, pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap. 397), to examine whether there are inadequacies in LandsD's enforcement against the problem of unauthorised use of public passages and atria in private malls for commercial purposes ("the Problem") and to make recommendations for improvement as appropriate. This investigation does not cover other breaches of the lease in private malls (such as opening hours of public passages and atria not conforming to lease conditions, unauthorised building works in other parts of the malls, etc.).

**1.4** On 4 October 2019, we issued our draft investigation report to LandsD for comments. After considering its comments, we finalised this investigation report on 9 January 2020.

# 2

# RELEVANT POLICIES, INFORMATION DISSEMINATION, OPERATIONAL GUIDELINES AND INSPECTIONS

## RELEVANT POLICIES

**2.1** The policy of providing public facilities (including public passages and atria) within private developments (including malls) for use by the public was first implemented in 1980 with the aim to promoting integrated design, optimising the use of land and meeting public and development needs. As at September 2019, there were altogether 118 developments in Hong Kong that were required under lease conditions to provide public passages in their malls, and two of them were also required under lease conditions to provide public atria in their malls. A list of those developments is at **Annex**.

## INFORMATION DISSEMINATION TO THE PUBLIC

**2.2** LandsD has uploaded to its website a list of private developments that are required under lease conditions to provide public facilities.

**2.3** The list provides information on the names and addresses of those private developments, the types of public facilities (including public passages and atria) specified under lease conditions and a brief description of each of those facilities (including the locations to be linked by the public passages and the permitted use of the public atria, etc.). An example is shown in **Figure 1**.

**Figure 1: Information about public facilities in private developments on LandsD's website (October 2019)**

| Relevant District Council | Development Name and Location | Requirement(s) under Lease | Brief Description | Remarks [Note 1] | Relevant District Lands Office and Contact Number |
|---|---|---|---|---|---|
| Central & Western District Council | World Wide House 19 Des Voeux Road Central | (a) Footbridge<br>(b) Public Pedestrian Walkway<br>(c) Public Pedestrian Passage | (a) It is accessible from Pedder Street.<br>(b) It is accessible from Pedder Street, Des Voeux Road Central and Connaught Road Central.<br>(c) It is accessible from Des Voeux Road Central and two footbridges across Pedder Street. | (a) Over government land. | District Lands Office/ Hong Kong West and South 2835 1701 |

## RELEVANT OPERATIONAL GUIDELINES

**2.4** According to the relevant operational guidelines of LandsD, the enforcement action and procedures for tackling breaches of lease conditions (including the Problem) are as follows.

**2.5** District Lands Offices ("DLOs") of LandsD conduct annual inspections at all public facilities (including public passages and atria) in private developments that are required to be provided under lease conditions. Upon receipt of a complaint/referral about breach of lease (including the Problem), DLO would conduct site inspection and check the lease conditions and approval records.

**2.6** Some common examples of the Problem are:

(1) the owner/management company appointed by the owner ("the management company") places or allows others to place tables and chairs on the public passage and then enclose the area with fences, such that the enclosed public passage becomes extended business areas of the restaurants along the passage. The enclosed public passage looks like parts of the restaurants, and the tables and chairs therein are for the exclusive use of the customers of those restaurants;

(2) the owners/management company places or allows others to place tables and chairs on the public passage, along which there are restaurants. Those tables and chairs are not enclosed or within the area

of any restaurant. They are not for the exclusive use of the customers of any restaurant;

(3) shop owners place and sell goods on the public passage; and

(4) the owner/management company sets up sales booths or places fee-charging children's play equipment, etc. on the public passage or atrium.

**2.7** Once a mall is confirmed to have the Problem, DLO would issue a warning letter to the owner/management company concerned and demand rectification of the breach before a specified date (normally 28 days). Upon expiry of the deadline, DLO would conduct a compliance check within one to three weeks to confirm rectification of the breach or otherwise. Should the breach remain unrectified, DLO would register the warning letter at the Land Registry ("LR") (commonly known as "imposing an encumbrance") and reserve the right to take further lease enforcement action, including, for cases with serious breaches (e.g. those that pose serious threats to public safety), re-entry of the lot or vesting of the relevant interest to the Government pursuant to the Government Rights (Re-entry and Vesting Remedies) Ordinance.

**2.8** In addition to taking enforcement action in accordance with lease conditions, for cases that fall within the ambit of other Government departments or where handling by other departments would be more appropriate, DLO may refer them to the relevant departments for follow-up.

## INSPECTIONS

**2.9** The number of inspections conducted by DLOs at the public passages and atria in private malls and the number of cases found with the Problem between 2014/15 and 2018/19 are given in **Table 1**.

**Table 1: Inspection statistics**

| Year | No. of private malls to provide public passage/ atrium under lease conditions *(a)* | Annual inspection | | No. of complaints received with respect to private malls in (a) for breach of lease *(d)* | Inspection in response to complaints received | | Total no. of cases found with the Problem *(g)= (c)+(f)* |
|---|---|---|---|---|---|---|---|
| | | No. of inspect-ions* *(b)* | No. of cases found with the Problem *(c)* | | No. of inspect-ions* *(e)* | No. of cases found with the Problem *(f)* | |
| 2014/ 15 | 115 | 114 | 8 | 0 | 0 | 0 | 8 |
| 2015/ 16 | 116 | 110 | 9 | 4 | 8 | 2 | 11 |
| 2016/ 17 | 117 | 108 | 8 | 19 | 53 | 6 | 14 |
| 2017/ 18 | 117 | 114 | 12 | 15 | 22 | 6 | 18 |
| 2018/ 19 | 117 | 121 | 10 | 7 | 18 | 4 | 14 |
| | | | | | | **Total** | **65** |

* *Including compliance checks.*

# 3

# SHORT TERM WAIVER MECHANISM

## APPLICATION FOR SHORT TERM WAIVER

**3.1** Under the current mechanism, owners of private developments (including malls) who intend to carry out commercial activities at public passages or atria provided under lease should apply for a Short Term Waiver ("STW") from DLO beforehand. Upon receipt of the application, DLO would consider whether it is consistent with the approval conditions, including whether it meets the requirements of the relevant outline zoning plan, and the views of relevant departments and the local community.

**3.2** If approved, the STW would carry additional conditions stipulating, *inter alia*, that the owner must pay an administration fee and a waiver fee. The amount of waiver fee payable would be the difference in rental value of the private development before and after the issue of the waiver letter.

## RECOVERY OF WAIVER FEES WITH RESPECT TO THE PROBLEM

**3.3** If an owner applies for an STW only after the Problem in the development has been found by DLO, the waiver fee payable would usually be dated back to the first day when DLO found the breach. Depending on whether there is sufficient evidence to confirm that first date, DLO may consider recovering a waiver fee of up to six years.

**3.4** On the other hand, where an owner does not apply for an STW even after the Problem in the development has been found by DLO, DLO may, on its own initiative, seek to recover waiver fee from the owner if the actual circumstances of the case so warrant, where there is sufficient evidence of breach of lease, the area involved and the

duration of the breach. This is the case even though the lease conditions do not stipulate the penalty to be imposed or require the owner to apply retrospectively for an STW. Where necessary, DLO would seek legal advice on whether there is sufficient legal basis to take such action.

**3.5** The number and the result of applications for STW received by DLOs between 2014/15 and 2018/19 are given in **Table 2**.

**Table 2: Number of STW applications and their result**

| **Year** | **No. of applications received** *(a)=(b)+(c)+(d)* | **No. of applications approved** *(b)* | **No. of applications rejected** *(c)* | **No. of applications under processing** *(d)* |
|---|---|---|---|---|
| 2014/15 | 0 | 0 | 0 | 0 |
| 2015/16 | 0 | 0 | 0 | 0 |
| 2016/17 | 1(1) | 0(1) | 1(0) | 0 |
| 2017/18 | 0 | 0 | 0 | 0 |
| 2018/19 | 1(1) | 0 | 0 | 1(1) |
| **Total** | **2(2)** | **0(1)** | **1(0)** | **1(1)** |

*Figures without brackets represent the number of applications received by DLOs before mall owners carried out commercial activities at public passages and atria in their malls and the results of those applications. Figures in brackets represent the number of applications received by DLOs after the Problem had been found and the results of those applications.*

# 4

# CASE STUDIES

**4.1** We have examined some cases involving unauthorised use of public passages and atria in private malls and scrutinised the relevant files of LandsD. The following four cases show the inadequacies of LandsD's enforcement against the Problem.

## CASE (1): DELAY IN ENFORCEMENT AND FAILURE TO MAKE REFERRAL

**4.2** According to the relevant lease conditions, levels one to three of Mall A shall be provided with public passages. Between 2014 and 2016, DLO found in each annual inspection part of the public passage on level one of the mall to have been enclosed to become the extended business areas of two restaurants in the mall, thereby constituting the Problem (see **para. 2.6(1)**). This is shown in **Photo 1**.

**Photo 1: The Problem in Mall A**



**(Source: LandsD)**

**4.3** The main enforcement action taken by DLO against the Problem in Mall A and the outcomes of enforcement are given in **Table 3**.

**Table 3: Enforcement action taken by DLO against the Problem in Mall A**

| | Date | Event |
|---|---|---|
| | **2014** | |
| (1) | July | DLO conducted annual inspection and found the Problem (see **para. 4.2**). |
| (2) | August to September | DLO issued warning letters thrice to the management company of Mall A, demanding rectification within one month. |
| (3) | October | DLO issued a warning letter to owner of Mall A,demanding rectification within one month. |
| (4) | November | DLO conducted compliance check and found the Problem to have been rectified. |
| | **2015** | |
| (5) | July | DLO conducted annual inspection and found the same problem. |
| (6) | September | DLO issued a warning letter to the management company of Mall A, demanding rectification within one month. |
| (7) | Same month | DLO conducted compliance check and found the Problem to have been rectified. |
| | **2016** | |
| (8) | June | DLO conducted annual inspection and found the same problem. |
| (9) | November | DLO issued a warning letter to owner of Mall A, demanding rectification within 14 days. |
| (10) | Same month | DLO conducted compliance check and found the Problem to have been rectified. |

**4.4** Regarding why DLO, having found the Problem in June 2016, waited until November that year (i.e. five months later) to issue a warning letter to the owner of Mall A (see **items (8) and (9)** in **Table 3**), LandsD explained that, upon noticing the Problem, DLO subsequently received a similar complaint against Mall A (including allegations that part of the public passages on levels one to three of the mall were used for setting up sales booths or as places for exhibition or children's playground). Having scrutinised the relevant land documents, DLO issued a warning letter to the owner of Mall A in November that year.

**4.5** That "similar complaint" (see **para. 4.4**) LandsD referred to above was in fact a media report in late October that year (2016) about the owner of Mall A breaching the lease by leasing out the public space of the mall. This Office considers LandsD's explanation unconvincing. In fact, upon noticing the Problem during its annual inspection in June 2016, DLO should have taken due enforcement action, like what it did in 2014 and 2015 (see **items (1) to (7)** in **Table 3**). Instead, it did nothing until receipt of that "similar complaint" four months later when it issued a warning letter to the owner of Mall A. There was delay in DLO's follow-up in 2016.

**4.6** According to the Food Business Regulation, no licensee shall, save with the written permission of the Director of Food and Environmental Hygiene, carry on a food business at or from any place beyond the confines of the food premises as delineated on the plan approved in the licence. In Case (1), DLO found thrice unauthorised extension of business areas of the restaurants concerned (see **para. 4.2 and items (1), (5) and (8)** in **Table 3**). Yet, it did not act in accordance with relevant operational guidelines to refer the case to the Food and Environmental Hygiene Department ("FEHD") for follow-up (see **para. 2.8**).

**4.7** In response to our query about this, LandsD issued a memorandum to DLOs in October 2018 to remind them that in following up cases involving the Problem, they should comply with the operational guidelines by referring cases that also fall within the ambit of other Government departments to the department concerned for follow-up.

### ***Our Site Visits***

**4.8** Between May 2018 and September 2019, we conducted six site visits at Mall A and did not find the Problem in all those visits.

## CASE (2): FAILURE TO TAKE ENFORCEMENT ACTION AT INITIAL STAGE, AND FAILURE TO CONDUCT COMPLIANCE CHECK IN A TIMELY MANNER AND "IMPOSE AN ENCUMBRANCE" IN SUBSEQUENT ENFORCEMENT ACTION

**4.9** According to the relevant lease conditions, a public passage shall be provided on level two of Mall B. There are several restaurants along the passage and they do not provide tables or chairs inside their business areas for customers' use.

**4.10** Between 2014 and 2016, during every annual inspection or compliance check at Mall B, DLO found a number of tables and chairs placed on the public passage, constituting the Problem (see **para. 2.6(2)**). This is shown in **Photo 2**.

**Photo 2: The Problem in Mall B**




**(Source: LandsD)**

**4.11** The main enforcement action taken by DLO against the Problem in Mall B and the outcomes of enforcement are given in **Table 4**.

**Table 4: Enforcement action taken by DLO against the Problem in Mall B**

| | Date | Event |
|---|---|---|
| | **2014** | |
| (1) | December | DLO conducted annual inspection and found the Problem (see **para. 4.10**). |
| | **2015** | |
| (2) | October | DLO conducted annual inspection and found the Problem again. |
| (3) | November | DLO issued a warning letter to owner of Mall B, demanding rectification at once. |
| | **2016** | |
| (4) | January | DLO conducted compliance check and found the Problem persisted. |
| (5) | July | DLO conducted annual inspection and still found the Problem. |
| (6) | August | DLO conducted site inspection with the management company of Mall B and found the Problem to have been rectified. |

**4.12** This Office notices that DLO found the Problem in December 2014 (see **item (1)** in **Table 4**) but took no enforcement action at all. It was not until the same problem was found again during the annual inspection for the following year (in October 2015) that it took enforcement action to issue a warning letter to the owner of Mall B in November that year, demanding immediate rectification (see **items (2) and (3)** in **Table 4**).

**4.13** Upon expiry of the deadline specified in a warning letter, DLO would normally conduct a compliance check within one to three weeks. If the irregularity remained unrectified, DLO would register the warning letter at LR (see **para. 2.7**). Case (2) involves delay because DLO only conducted a compliance check two months after the deadline specified in the warning letter it issued in November 2015 had expired (see **items (3) and (4)** in **Table 4**). Besides, when DLO found the irregularity remained during the compliance check, it failed to register the warning letter at LR. Aside from violating operational guidelines, the inaction of DLO failed to exert any deterrent effect

on the owner of Mall B. As a result, the Problem lingered (see **item (5)** in **Table 4**).

### ***Our Site Visits***

**4.14** Between September 2018 and August 2019, we conducted four site visits at Mall B. We found tables and chairs placed on the public passage in question in all those visits. A lot of customers were sitting in front of those tables to enjoy their food bought from the restaurants along the passage, as shown in **Photos 3 to 6**.

**Photo 3**:
Taken in September 2018



**Photo 4**:
Taken in January 2019







**Photo 5**:
Taken in April 2019

**Photo 6**:
Taken in August 2019

## CASE (3): FAILURE TO ISSUE WARNING LETTERS PROPERLY, "IMPOSE AN ENCUMBRANCE" AND CONDUCT COMPLIANCE CHECKS IN A TIMELY MANNER

**4.15** The public passage on level one of Mall C was built on Government land. It was constructed and regulated in accordance with the licence agreement signed between the owner of the mall and the Government. Under the licence agreement, the public passage should be free of obstruction and open for use by the public round-the-clock. It is also regulated by the lease concerned under which it must not be used for commercial purposes, unless with an STW application approved by DLO (see **paras 1.1 and 3.1**).

**4.16** There were a number of shops selling clothes, cooked food and groceries along the public passage. In November 2015, DLO conducted an annual inspection and found that goods were placed thereon, constituting the Problem (see **para. 2.6(3)**). This is shown in **Photo 7**.

**Photo 7: The Problem in Mall C**



**(Source: LandsD)**

**4.17** Between December 2015 and April 2019, DLO took a number of enforcement actions against the above problem, which included issuing warning letters to the owner of Mall C and/or the shop owners concerned, and conducting compliance checks upon expiry of the deadlines specified in those letters. Details are in **Table 5**.

**Table 5: Enforcement actions taken by DLO against the Problem in Mall C**

| | **Warning Letter** | | | **Date and outcome of compliance check** | |
|---|---|---|---|---|---|
| | **Date of Issuance** ***(a)*** | **Date by which the Problem must be rectified (time limit for rectification)** ***(b)*** | **Recipient** ***(c)*** | **Date of compliance check (No. of days after deadline for rectification/ last compliance check)** ***(d)*** | **Whether the Problem was rectified** ***(e)*** |
| (1) | 29 December 2015 | Immediate | Owner of the mall | 22 January 2016 (24 days) | No |

| | Warning Letter | | | Date and outcome of compliance check | |
|---|---|---|---|---|---|
| | **Date of Issuance** *(a)* | **Date by which the Problem must be rectified (time limit for rectification)** *(b)* | **Recipient** *(c)* | **Date of compliance check (No. of days after deadline for rectification/ last compliance check)** *(d)* | **Whether the Problem was rectified** *(e)* |
| (2) | 16 February 2016 | 15 March 2016 (28 days) | Owner of the mall | 15 March 2016 (same day) | No |
| (3) | 21 March 2016 | Immediate | Owner of the mall | 6 April 2016 (16 days) | No |
| | | | | 30 April 2016 (24 days) | No |
| (4) | 28 June 2016 | 26 July 2016 (28 days) | Owner of the mall | 6 August 2016 (11 days) | No |
| (5) | 19 August 2016 | 2 September 2016 (14 days) | Owner of the mall | 3 September 2016 (1 day) | No |
| (6) | 23 February 2017 | 16 March 2017 (21 days) | Owner of the mall | 5 June 2017 (81 days) | No |
| (7) | 6 June 2017 | 20 June 2017 (14 days) | Owner of the mall | 23 June 2017 (3 days) | No |
| (8) | 28 June 2017 | 12 July 2017 (14 days) | Owner of the mall and shop owners concerned | 13 July 2017 (1 day) | No, but with obvious improvement |
| | | | | 27 September 2017 (76 days) | No |

| | Warning Letter | | | Date and outcome of compliance check | |
|---|---|---|---|---|---|
| | Date of Issuance *(a)* | Date by which the Problem must be rectified (time limit for rectification) *(b)* | Recipient *(c)* | Date of compliance check (No. of days after deadline for rectification/ last compliance check) *(d)* | Whether the Problem was rectified *(e)* |
| (9) | 13 June 2018 | 11 July 2018 (28 days) | Shop owners concerned | 24 July 2018 (13 days) | No |
| | | | | 31 July 2018 (7 days) | No |
| (10) | 2 August 2018 | 16 August 2018 (14 days) | Shop owners concerned | 17 August 2018 (1 day) | Yes |
| | | | | 23 August 2018 (6 days) | Yes |
| (11) | 28 February 2019 | 14 March 2019 (14 days) | Shop owners concerned | 18 March 2019 (4 days) | Yes |
| (12) | 28 February 2019 | 28 March 2019 (28 days) | Shop owners concerned | 29 March 2019 (1 day) | No |
| (13) | 11 April 2019 | 25 April 2019 (14 days) | Shop owners concerned | 30 April 2019 (5 days) | Yes |

**4.18** Between December 2015 and April 2019, DLO issued in total 13 warning letters (see **column (a)** in **Table 5**) to the owner of Mall C and/or the shop owners concerned regarding the Problem (see **para. 4.16**) and conducted 17 compliance checks after expiry of the deadlines specified in those letters (see **column (d)** in **Table 5**). In 13 of its compliance checks, DLO found the Problem remained (see **column (e), items**

**(1) to (9) and (12)** in **Table 5**).

**4.19** According to LandsD, the 9th to 13th warning letters (see **items (9) to (13)** in **Table 5**) were issued after DLO had obtained legal advice that the lease conditions were also applicable to the shop owners of Mall C. DLO, therefore, issued the warning letters to the shop owners concerned. Notwithstanding that DLO had issued warnings to shop owners upon receipt of the legal advice, we consider that DLO should also issue those warning letters to the owner of Mall C, like what it did with the 8th warning letter (see **item (8)** in **Table 5**). Its failure to do so reflected insufficiency in enforcement.

**4.20** Furthermore, the relevant operational guidelines stipulate that if a breach remains unrectified upon expiry of the deadline in the warning letter, DLO would register the warning letter at LR (see **para. 2.7**). In Case (3), we notice that despite the persistence of the Problem in Mall C, DLO did not register the warning letters it issued to the owner of the mall and/or the shop owners concerned at LR. The reason for DLO's inaction, as LandsD explained, was that the public passage in question was built on Government land, so the licence agreement has not been registered at LR. DLO, therefore, considered that the warning letters could not be registered at LR.

**4.21** The breach of lease at the public passage in question involved a breach of both the licence agreement and lease conditions (see **para. 4.15**), a fact also stated in the warning letters issued by DLO to the owner of Mall C. This Office considers that even if DLO could not register the warning letters at LR for violation of the licence agreement, it could have done so for a breach of lease conditions by the owner of Mall C. Worries of imprudence could be addressed by issuing separate warning letters to the owner of Mall C for breaches of licence agreement and lease conditions. In this way, the warning letters could be explicitly and expressly registered at LR in inspect of the owner's breach of lease conditions.

**4.22** We notice that the warning letters issued to the shop owners concerned by DLO clearly indicated that if the owners failed to rectify the breach before the specified deadlines, DLO would consider registering the warning letters at LR and/or take further lease enforcement action. However, when the Problem was found to have persisted during compliance checks after the deadlines specified in the warning letters issued to the shop owners concerned in June 2017 and June 2018 had expired (see **items (8) and (9)** in **Table 5**), the warning letters were not registered at LR. This reflected DLO's failure to take enforcement action in accordance with the relevant operational guidelines (see **para. 2.7**). Such lax enforcement simply could not exert any deterrent effect on

the shop owners concerned. The breach lingered as a result.

**4.23** Furthermore, compliance check would normally be conducted within one to three weeks after expiry of the deadline specified in the warning letter issued against a breach (see **para. 2.7**). In Case (3), DLO conducted some compliance checks at Mall C more than three weeks after expiry of the deadlines specified in the warning letters, with one conducted as late as 81 days later (see **column (d), item (6)** in **Table 5**). That was unsatisfactory.

**4.24** In response to our queries about delayed enforcement by DLO, LandsD reminded DLOs in the memorandum it issued to them in October 2018 (see **para. 4.7**) to take prompt enforcement action upon finding a breach of lease.

### *Our Site Visits*

**4.25** Between July 2018 and August 2019, we conducted four site visits at Mall C and found shops displaying and selling goods on the public passage in question in all those visits, as shown in **Photos 8 to 11**.



**Photo 8:**
A shop selling food
at the public passage
(Taken in July 2018)



**Photo 9:**
A shop placing boxes of goods
on the public passage
(Taken in November 2018)

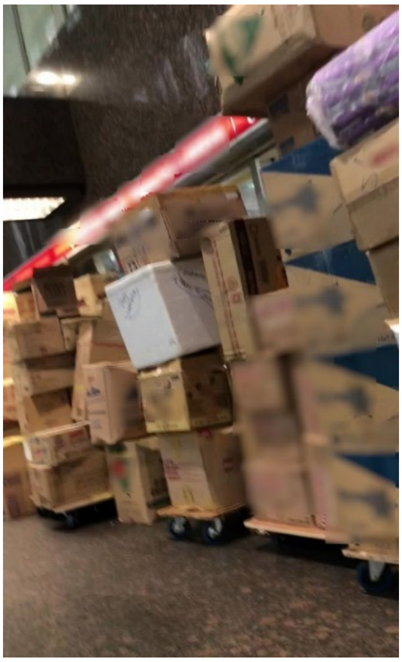


**Photo 10:**
A shop placing boxes
of goods on the public passage
(Taken in April 2019)



**Photo 11:**
A shop placing boxes
of goods on the public passage
(Taken in August 2019)

## CASE (4): FAILURE TO ISSUE WARNING LETTERS IN A TIMELY MANNER

**4.26** The lease conditions of Mall D stipulate the provision of a public passage on level two of the mall.

**4.27** In August 2015, the management company of Mall D enquired of DLO about the problem of obstruction caused by sales booths set up on the public passage. DLO subsequently conducted an inspection that month and found several sales booths on the public passage, constituting the Problem (see **para. 2.6 (4)**). This is shown in **Photo 12**.

**Photo 12: The Problem in Mall D**



**4.28** The main enforcement actions taken by DLO against the Problem in Mall D and the outcomes of enforcement are given in **Table 6**.

**Table 6: Enforcement action taken by DLO against the Problem in Mall D**

| | Date | Event |
|---|---|---|
| | **2015** | |
| (1) | August | DLO conducted an inspection in response to an enquiry by the management company of Mall D and found the Problem (see **para. 4.27**). |
| (2) | September | DLO verbally advised the management company of Mall D to |

| | | |
|---|---|---|
| | | keep the public passage free of obstruction. |
| (3) | November | DLO verbally advised the management company of Mall D that the Problem remained and the public passage concerned must be kept free of obstruction. It also pointed out that further inspection would be conducted, and if the Problem were to be found again, it would issue a letter to the owner of the mall. |
| (4) | December | DLO found the Problem during an inspection. |
| (5) | Same month | DLO issued a warning letter to the owner of Mall D, demanding rectification within three weeks. |
| | **2016** | |
| (6) | January | DLO conducted two compliance checks and found the Problem on both occasions. |
| (7) | End of same month | DLO issued another warning letter to the owner of Mall D, demanding rectification within one week. |
| (8) | Mid-February | DLO conducted compliance check and confirmed the Problem to have been rectified. |

**4.29** LandsD explained to us that DLO conducted an inspection in response to an enquiry by the management company of Mall D and found the Problem. Later, DLO learned from the management company that most of the sales booths were removed and the company undertook to follow up the remaining objects of obstruction on the public passage. This was why DLO only repeated its verbal advice to the company when the Problem was initially found.

**4.30** While DLO found the Problem in August 2015, it only issued a warning letter to the owner of Mall D in December that year (four months later) to demand rectification. When its compliance checks in the interim confirmed persistence of the Problem, DLO only repeatedly issued verbal advice to the management company. This Office is of the view that the enforcement was too lax and did not comply with the relevant operational guidelines (see **para. 2.7**). As a result, it took six months to rectify the Problem in Mall D.

### *Our Site Visits*

**4.31** Between August 2018 and September 2019, we conducted five site visits at Mall D and did not find the Problem on the public passage in question in all those visits.

## CASES (2) TO (4): FAILURE TO RECOVER WAIVER FEES FROM THE OWNERS OF THE MALLS

**4.32** In Case (1), while DLO was taking enforcement action against the Problem in Mall A, the owner of the mall applied retrospectively from DLO an STW in November 2016 (see **para. 3.3**) and provided DLO with records of the commercial activities carried out on the public passages on levels one to three of the mall during the five and a half years between April 2011 and November 2016. Eventually, DLO recovered the waiver fee for the above five-and-a-half-year period, which exceeded a hefty $24 million.

**4.33** On the contrary, for Cases (2) to (4), no information came to light that DLOs had ever considered recovering waiver fees from the owners of the malls concerned. LandsD argued that since the owners of those malls did not apply for any STW, DLOs could in no way recover waiver fees from them.

**4.34** This Office could not agree to LandsD's handling of those cases. Under the current mechanism, even an owner does not apply retrospectively for an STW upon DLO finding the Problem, DLO may take the initiative to recover waiver fee from the owner, depending on the actual circumstances of the case (see **para. 3.4**).

# 5

# *OUR COMMENTS AND RECOMMENDATIONS*

**5.1** Based on the findings of our investigation, we consider that there were inadequacies and areas for improvement in LandsD's handling of the Problem, both in terms of its enforcement and information dissemination.

## ENFORCEMENT

**5.2** According to LandsD's operational guidelines, upon finding a breach of lease, DLO would issue a warning letter to the owner concerned and demand rectification of the breach before a specified deadline. Should the breach remain unrectified upon expiry of the deadline, DLO would register the warning letter at LR and reserve the right to take further lease enforcement action (see **para. 2.7**). Our investigation, however, found that DLOs' enforcement against the Problem was too lax, with the following inadequacies.

### *(I) No or Delayed Enforcement*

**5.3** Case (2) showed that DLO found the Problem in its annual inspection in 2014 but, contrary to the requirements of the relevant operational guidelines, failed to take any enforcement action. It was not until ten months later when it conducted the annual inspection for 2015 when it found the same problem and issued a warning letter to the owner of Mall B (see **para. 4.12**).

**5.4** In Case (1), DLO found the Problem during an inspection in June 2016, but waited until November that year (five months later) before issuing a warning letter to the owner of Mall A (see **para. 4.4**). In Case (4), the Problem was found in August 2015, but DLO simply repeated its verbal advice to the management company of Mall

D initially to demand rectification. Only when the Problem was found to be persistent did DLO issue a warning letter to the owner of Mall D in December that year to demand rectification (see **para. 4.30**). That was already more than four months since the breach was found.

**5.5** We notice that LandsD operational guidelines (see **para. 2.7**) have not specified a time limit for issuing warning letters after DLO found a breach. Although the Department has, in response to this direct investigation, reminded DLOs to take prompt enforcement action upon finding a breach (see **para. 4.24**), we consider that the Department should review the relevant guidelines and set a time limit for issuance of warning letters so that DLO staff can have an objective standard to follow for timely enforcement.

**5.6** Furthermore, DLO would normally conduct a compliance check within one to three weeks upon expiry of the deadline specified in the warning letter (see **para. 2.7**). In Case (2), however, DLO conducted a compliance check two months after the deadline had expired (see **para. 4.13**). In Case (3), a compliance check was conducted as late as 81 days after expiry of the deadline (see **para. 4.23**). These far exceeded the normal time limit for conducting a compliance check.

**5.7** We also notice in Case (1) that having confirmed during compliance checks that the Problems found in 2014 and 2015 had been rectified (see **items (4) and (7)** in **Table 3** under **para. 4.3**), DLO inspected again only when the annual inspection for the following year was due (see **items (5) and (8)** in **Table 3**). Those annual inspections and compliance checks were eight to nine months apart. We are of the view that for cases where the Problem has rectified, DLOs should conduct follow-up checks at an appropriate time prior to the annual inspection for the following year. In this way, DLOs can keep monitoring whether the Problem revives between annual inspections, and have a reference point of when the breach took place when they recover waiver fee from the owner of a private mall.

### *(II) Insufficient Enforcement*

**5.8** In Case (3), DLO, having repeatedly issued warning letters to the owner of Mall C, only issued the 9$^{th}$ to 13$^{th}$ warning letters to the shop owners concerned. It did not follow the arrangements for issuing the 8$^{th}$ warning letter in which the owner of the mall and the shop owners concerned were all issued with the letter (see **column (c), items (8) to (13)** in **Table 5** under **4.17**). While the 9$^{th}$ to 13$^{th}$ warning letters were

issued to the shop owners concerned based on the legal advice obtained by DLO that the lease conditions also applied to the shop owners of the mall, we consider that DLO should have issued those warning letters to the owner of Mall C as well. Mall owners should ensure that the public passages and/or atria in their malls are in compliance with lease conditions (see **para. 1.1**). It follows that in similar cases where the lease conditions are also applicable to shop owners in a private mall, DLO should also issue a warning letter to the owner of the mall.

### *(III) Failure to Register Warning Letters at LR*

**5.9** LandsD's operational guidelines stipulate that if a breach of lease remains unrectified upon expiry of the deadline specified in the warning letter, DLO would register the warning letter at LR. Yet, the guidelines do not stipulate a time limit of when DLO should register a warning letter at LR upon finding that a breach remains unrectified. In Case (2), DLO issued a warning letter to the owner of Mall B, demanding rectification of the Problem. Its compliance check revealed that the Problem remained (see **para. 4.13**), but it did not register the warning letter at LR. The warning letter, therefore, exerted no deterrent effect on the owner of Mall B and the breach lingered.

**5.10** Case (3) is even more serious. DLO issued a total of 13 warning letters to demand rectification of the Problem and found in 13 of its 17 compliance checks that the breach persisted. Still, DLO failed to register the warning letters at LR (see **paras. 4.18 to 4.22**), such that the offenders completely ignored the warning letters and repeatedly carried out commercial activities on the public passage against the lease.

**5.11** We consider that LandsD should review the relevant operational guidelines to include a time limit for registering warning letters at LR, and to specify the time limit in the warning letter. This can heighten the awareness of DLO staff and provide them with an objective standard for taking further enforcement action, as well as exerting a greater deterrent effect on offenders.

### *(IV) Failure to Refer Suitable Cases of Breach to Other Relevant Department for Follow-Up*

**5.12** According to the relevant operational guidelines, for cases of breach of lease that fall within the ambit of other Government departments or where handling by other departments would be more appropriate, DLO may, in addition to taking lease

enforcement action, refer them to the relevant departments for follow-up (see **para. 2.8**). In Case (1), DLO thrice found the restaurants concerned might have violated the provisions of the Food Business Regulations by extending their business areas to the public passage in Mall A, but it never referred the case to FEHD for follow-up (see **para. 4.6**). Fortunately, after we had raised queries about this, LandsD issued a memorandum in October 2018 to remind DLOs to follow the requirements of the operational guidelines and refer cases that fall within the ambit of other Government departments for follow-up in parallel (see **para. 4.7**).

### *(V) Failure to Proactively Recover Waiver Fee from Owners Who Have Breached the Lease*

**5.13** Under the current mechanism, owners of private malls who intend to hold commercial activities at public passages or atria provided under lease should apply for an STW from DLO in advance (see **para. 3.1**). If an owner of a mall applies for an STW only after the Problem has been found by DLO, the waiver fee payable would usually be dated back to the first day when DLO found the breach (see **para. 3.3**). If an owner does not apply for an STW even a breach has been found, DLO may take the initiative to recover the waiver fee, depending on the actual circumstances of the case (see **para. 3.4**).

**5.14** During the five years between 2014/15 and 2018/19, LandsD found a total of 65 cases with the Problem (see **Table 1** under **para. 2.9**). In only two of those cases, STWs were applied for after the Problem had been found (see **Table 2** under **para. 3.5**). LandsD confirmed to us that action was only taken to recover waiver fee from the owner of Mall A, which exceeded a hefty $24 million, for unauthorised commercial use of public passages that persisted for as long as five and a half years (see **para. 4.32**). Cases (2) and (4) were among the many other cases in which no proactive action was taken to recover waiver fees. LandsD argued that since the owners of the malls concerned did not apply for an STW from DLO, DLOs could in no way recover the waiver fees (see **para. 4.33**). We cannot agree with LandsD’s handling. We consider DLOs to have failed to make good use of their enforcement power and take the initiative to recover waiver fees from owners of the malls found to have the Problem. In Case (1), DLO recovered more than $24 million from the owner of the mall concerned. In the 60 odd remaining cases where no applications for an STW were ever submitted and where LandsD took no action to recover any waiver fees, the waiver fees involved could easily be in the zone of hundreds of millions of dollars. DLOs should take serious action to recover waiver fees in order to exert deterrent effects on offenders, bringing in

revenues for the Government coffers at the same time. We note that LandsD can recover a waiver fee of up to six years (see **para. 3.3**). It should revisit all known cases with the Problem and take prompt action to recover waiver fees from owners of the malls concerned. DLOs should recover waiver fees in a timely manner for all cases found with the Problem in future.

### *(VI) Unclear Enforcement Objective and Ineffective Enforcement*

**5.15** DLOs indicated that they would take enforcement action against the Problem. However, their enforcement has been lax. In Cases (2) and (3), DLO did not take any further action to register the warning letters at LR when the Problems remained unrectified upon expiry of the deadlines specified in the warning letters (see **paras. 5.9 and 5.10**). On the other hand, LandsD allows owners of private malls to apply for an STW before holding commercial activities at public passages and atria in their malls (see **para. 3.1**). Even when their malls have been found with the Problem by DLO, the owners can still apply retrospectively for an STW from DLO (as in Case (1))(see **paras 3.3 and 4.32**). It is not clear whether LandsD's policy objective is to strictly ban all forms of the Problem, or to permit owners of malls to hold commercial activities at public passages and atria through application for an STW.

**5.16** LandsD's operational guidelines specify that if a breach remains unrectified upon expiry of the deadline specified in the warning letter, DLO would register the warning letter at LR. For cases with serious breaches (e.g. those that pose serious threats to public safety), DLO would reserve the right to take further lease enforcement action, including re-entry of the lot or vesting of the relevant interest to the Government (see **para. 2.7**). Meanwhile, DLO can recover a waiver of up to six years from owners of malls (see **para. 3.3**). We consider these measures ineffective in eradicating the Problem. The reasons are as follows.

(1) the purpose of registering a warning letter at LR is to impose an encumbrance on the property so that the owner would be encouraged to rectify the Problem, while potential buyers or tenants would be aware of the Problem at the premises concerned and be prudent in considering whether to buy or lease a property with a warning letter registered by the Government. Yet, if private malls/shops with the Problem are not for sale/lease, then the effectiveness of registering a warning letter at LR in urging the owners/shop owners of private malls to rectify the Problem would be limited;

(2) LandsD confirmed to this Office that it had never re-entered a lot or vested the relevant interest to the Government in handling cases with the Problem; and

(3) if DLOs recover waiver fees from the owners of private malls upon finding the Problem, the owners only need to pay the difference in rental value of their malls resulting from the waiver. No penalty would be imposed. Hence, the owners can still enjoy the direct profit and indirect benefits (such as increased customer flow) brought about by the Problem, less the waiver fee payable.

**5.17** This Office takes the view that LandsD should set a clear objective for its enforcement action against the Problem. If it considers that the Problem must be eradicated, it should devise practical and feasible enforcement measures with deterrent effects, such as adoption of more effective regulatory procedures, and consider specifying in the leases of future developments that once the Problem is found, DLO would not only recover the waiver fee, but also impose an additional administration fee. If LandsD considers that the Problem poses no threats to public interest, it should then find ways to regulate commercial activities at public passages and atria in private malls, such as regularisation of such activities.

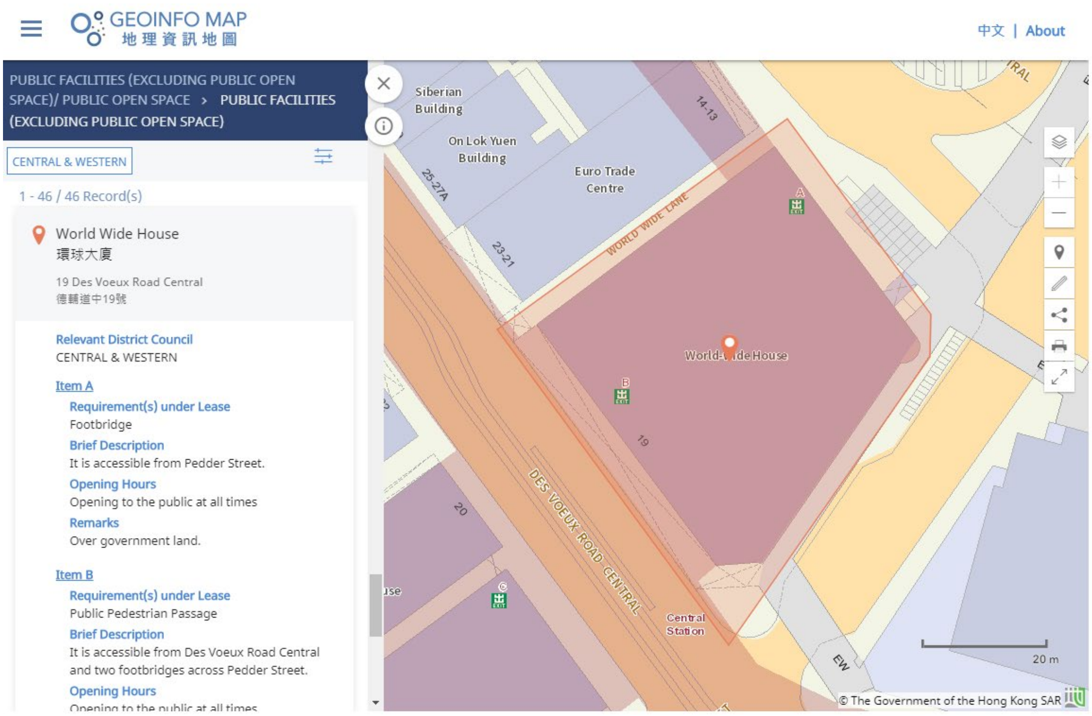
## INFORMATION DISSEMINATION

### *(VII) Inadequate Information Provided to the Public about Public Passages/Atria in Private Malls*

**5.18** Information about private developments in which public passages and/or atria are required under lease conditions is uploaded on LandsD's website (see **paras. 2.2 and 2.3**, and **Figure 1**). Yet, the information is just brief text descriptions, not sufficient for members of the public to know the specific locations and areas of such public facilities. LandsD has been receiving just a handful of complaints each year about the malls in private developments having violated the lease (including commercial use in breach of lease) (see **column (d)** in **Table 1** under **para. 2.9**). Nevertheless, our several site visits at the malls of Cases (2) and (3) found the Problems to be persistent (see **paras 4.14 and 4.25**). We believe the number of complaints has been small because the public would not know the specific locations and areas of those public passages and atria, nor could the public monitor their proper use.

**5.19** In response to our comments on the inadequacy of the information being provided, LandsD responded that DLOs have sent letters to the owners or management companies of all the 118 private malls (see **para. 2.1**), suggesting that layout plans be displayed at the entrances/exits of the public passages/atria in their malls to show clearly the locations and routing of such facilities for public use. As at early December 2019, eight malls are already displaying such layout plans. Besides, LandsD would upload in phases more related information on its website for greater transparency. It has completed in December 2019 uploading on its GeoInfo Map website information about public facilities (including public passages and/or atria) provided in private developments required under lease. An example is shown in **Figure 2**.

**Figure 2: Information about public facilities provided in private developments on the GeoInfo Map website (December 2019)**



**5.20** LandsD anticipated that the next phase of taking pictures and videos of those public facilities and uploading them on the GeoInfo Map website would be completed in the first quarter of 2021, so that the public would know better the specific locations and areas of those public facilities.

## RECOMMENDATIONS

**5.21** In the light of the above comments, The Ombudsman recommends that LandsD:

***Enforcement***

(1) review relevant operational guidelines to stipulate the time limits for issuing warning letters after DLO becomes aware of a breach (see **para. 5.5**) and for registering warning letters at LR when a breach is found to have persisted. The time limit for the latter should be specified in the warning letter (see **para. 5.11**);

(2) revisit as soon as possible all known cases with the Problem and take prompt action to recover waiver fees from the owners of the malls concerned. DLOs should recover waiver fees in a timely manner for all cases found with the Problem in future (see **para. 5.14**);

(3) regarding shop owners whose shops constitute the Problem and where the Problem persists, DLOs should, as in Case (3), seek legal advice for determining whether the lease conditions are also applicable to those shop owners and whether DLOs can issue warning letters to them (see **para. 4.19**);

(4) set a clear objective for enforcement action against the Problem. If it considers that the Problem must be eradicated, it should devise practical and feasible enforcement measures with deterrent effects, such as adoption of more effective regulatory procedures, and consider specifying in the leases of future developments that once the Problem is found, DLO would not only recover the waiver fee, but also impose an additional administration fee. If it considers a strict ban on the Problem not necessary, it should then find ways to regulate commercial

activities at public passages and atria in private malls, such as regularisation of such activities (see **para. 5.17**);

***Information Dissemination***

(5) follow up regularly with private malls concerning their implementation of the Department's suggestion that layout plans which show the locations and routing of public passages and/or atria in the malls be displayed at the entrances/exits of those facilities (see **para. 5.19**), and consider stipulating in the leases of new private developments (including malls) that owners of the developments must display such layout plans at the entrances/exits of the public passages and/or atria in their malls;

(6) follow its schedule in uploading more information (including photographs or videos) about public passages/atria in private malls on the GeoInfo Map website (see **para. 5.20**) to enhance transparency and public access to information; and

(7) upload regularly on the GeoInfo Map website information (including photographs or videos) about public passages/atria in new private developments (including malls).

## ACKNOWLEDGEMENTS

**5.22** The Ombudsman thanks LandsD for its full cooperation during the course of this investigation.

**Office of The Ombudsman**
**Ref: OMB/DI/425**
**January 2020**

**Annex**

**Private developments with land lease conditions requiring the provision of public pedestrian passages/public atria in their malls (as at September 2019)**

| | Name of development | Name of mall | Address |
|---|---|---|---|
| | **Eastern District** | | |
| (1) | Island Resort | Island Resort Mall | 28 Siu Sai Wan Road |
| (2) | Fullview Garden | Commercial Centre of Fullview Garden | 18 Siu Sai Wan Road |
| (3) | New Jade Gardens | New Jade Shopping Arcade | 233 Chai Wan Road |
| | **Wan Chai** | | |
| (4) | Great Eagle Centre & Harbour Centre | Great Eagle Centre and Harbour Centre | 23 & 25 Harbour Road |
| (5) | China Resources Building | China Resources Building | 26 Harbour Road |
| (6) | Sun Hung Kai Centre | Sun Hung Kai Centre | 30 Harbour Road |
| | **Central and Western District** | | |
| (7) | Hong Kong Station Development | International Finance Centre | Harbour View Street, Central |
| (8) | Lippo Centre | Lippo Centre | 89 Queensway |
| (9) | Infinitus Plaza | Infinitus Plaza | 199 Des Voeux Road Central |
| (10) | Hang Seng Bank Headquarters | Hang Seng Bank Headquarters | 83 Des Voeux Road Central |
| (11) | Admiralty Centre | Admiralty Centre | 18 Harcourt Road |
| (12) | Fairmont House | Fairmont House | 8 Cotton Tree Drive |
| (13) | Shun Tak Centre | Shun Tak Centre | 168-200 Connaught Road Central |
| (14) | Exchange Square | Exchange Square | 8 Connaught Place |
| (15) | 100 Queen’s Road Central | 100QRC | 100 Queen's Road Central |

| | Name of development | Name of mall | Address |
|---|---|---|---|
| (16) | Citibank Plaza | Citibank Plaza | 3 Garden Road |
| (17) | CITIC Tower | CITIC Tower | 1 Tim Mei Avenue |
| (18) | Pacific Place | Pacific Place | 88 Queensway |
| (19) | United Centre | United Centre | 95 Queensway |
| (20) | World Wide House | World Wide Plaza | 19 Des Voeux Road Central |
| (21) | The Peak Tower | The Peak Tower | 128 Peak Road |
| | **Southern District** | | |
| (22) | Cyberport Development | The Arcade | Telegraph Bay, Pokfulam |
| | **Kwun Tong** | | |
| (23) | Millennium City 5 | APM | 418 Kwun Tong Road |
| (24) | 8 Clear Water Bay Road | Infinity Eight | 8 Clear Water Bay Road |
| (25) | International Trade & Exhibition Centre | E-Max | 1 Trademart Drive, Kowloon Bay |
| | **Wong Tai Sin** | | |
| (26) | Galaxia | Plaza Hollywood | 3 Lung Poon Street |
| (27) | The Latitude | Mikiki | 638 Prince Edward Road East |
| | **Kowloon City** | | |
| (28) | Harbour Place | Harbour Place | 8 Oi King Street |
| (29) | The Metropolis Residence | Fortune Metropolis | 89 Metropolis Drive |
| | **Sham Shui Po** | | |
| (30) | Banyan Garden | Banyan Mall | 863 Lai Chi Kok Road |
| (31) | Festival Walk | Festival Walk | 80 Tat Chee Avenue |
| | **Yau Tsim Mong** | | |
| (32) | Langham Place | Langham Place | 8 Argyle Street/ 555 Shanghai Street |

| | Name of development | Name of mall | Address |
|---|---|---|---|
| (33) | China Hong Kong City | China Hong Kong City | 33 Canton Road, Tsim Sha Tsui |
| (34) | Olympian City 3 | Olympian City 3 | Hoi Wang Road |
| (35) | Olympian City 2 | Olympian City 2 | 18 Hoi Ting Road |
| (36) | Kowloon Station Development | Elements | 1 Austin Road West |
| (37) | K11 | K11 | 18 Hanoi Road |
| | **Islands** | | |
| (38) | The Visionary | The Visionary | 1 Ying Hong Street, Tung Chung, Lantau |
| (39) | Citygate | Citygate | 20 Tat Tung Road, Tung Chung |
| | **Sai Kung** | | |
| (40) | Tseung Kwan O Plaza | Tseung Kwan O Plaza | 1 Tong Tak Street, Tseung Kwan O |
| (41) | Park Central | Park Central | 9 Tong Tak Street, Tseung Kwan O |
| (42) | The Grandiose | PopCorn 2 | 9 Tong Chun Street, Tseung Kwan O |
| (43) | Metro Town | Metro Town | 8 King Ling Road, Tseung Kwan O |
| (44) | The Wings | PopCorn 1 | 9 Tong Yin Street Tseung Kwan O |
| (45) | The Wings II | PopWalk | 12 Tong Chun Street Tseung Kwan O |
| (46) | Central Heights | Park Central | 9 Tong Tak Street Tseung Kwan O |
| (47) | Metro City Phase 2 | MCP Central | 8 Yan King Road, Tseung Kwan O |
| (48) | The Metropolis, Metro City Phase 3 | MCP Discovery | 8 Mau Yip Road, Tseung Kwan O |

| | Name of development | Name of mall | Address |
|---|---|---|---|
| (49) | Metro City Phase I | Metro City Plaza I | 1 Wan Hang Road, Tseung Kwan O |
| (50) | Nam Fung Plaza | Nam Fung Plaza | 8 Pui Shing Road, Tseung Kwan O |
| (51) | Maritime Bay | Maritime Bay | 18 Pui Shing Road, Tseung Kwan O |
| (52) | East Point City | East Point City | 8 Chung Wa Road, Tseung Kwan O |
| (53) | La Cite Noble | La Cite Noble | 1 Ngan O Road, Tseung Kwan O |
| (54) | Residence Oasis | The Lane | 15 Pui Shing Road, Tseung Kwan O |
| | **Sha Tin** | | |
| (55) | Sunshine City* | MOSTown | 18 On Luk Street, Ma On Shan |
| (56) | Bayshore Towers * | Ma On Shan Plaza | 608 Sai Sha Road, Ma On Shan |
| (57) | Double Cove | Double Cove Place | 8 Lok Wo Sha, Wu Kai Sha, Ma On Shan |
| (58) | New Town Tower & Royal Park Hotel | New Town Tower & Royal Park Hotel | 8-18 Pak Hok Ting Street |
| (59) | New Town Plaza (Phase III) | New Town Plaza (Phase III) | 2-8 Sha Tin Centre Street |
| (60) | New Town Plaza (Phase I) | New Town Plaza (Phase I) | 18 Sha Tin Centre Street |
| (61) | Lucky Plaza | Lucky Plaza | 1-15 Wang Pok Street |
| (62) | Sha Tin Centre | Sha Tin Centre | 2-16 Wang Pok Street |
| (63) | Hilton Plaza | Hilton Plaza | 3-9 Sha Tin Centre Street |
| (64) | Shatin Plaza | Shatin Plaza | 21-27 Sha Tin Centre Street |
| (65) | Scenery Court | Scenery Court | 1 Sha Tin Centre Street |

| | Name of development | Name of mall | Address |
|---|---|---|---|
| (66) | Wai Wah Centre | Chanway Shopping Centre | 11-17 Sha Tin Centre Street |
| (67) | Grandeur Garden | Grandeur Shopping Arcade | 2-18 Chik Fai Street & 55-65 Tai Wai Road |
| | **Tsuen Wan** | | |
| (68) | Indi Home | Indi Home | 138 Yeung Uk Road |
| (69) | H Cube | H Cube | 116-122 Yeung Uk Road |
| (70) | Vision City | Citywalk | 1 Yeung Uk Road |
| (71) | Discovery Park | D • Park | 398 Castle Peak Road |
| (72) | City Landmark II | Kolour • Tsuen Wan II | 67-95 Tsuen Wan Market Street |
| (73) | Skyline Plaza | Skyline Plaza | 88 Tai Ho Road |
| (74) | City Landmark | Kolour • Tsuen Wan I | 68 Chung On Street |
| (75) | Ho Fai Garden Block 1 | Ho Fai Commercial Centre | 218-220 Sai Lau Kok Road & 90-92 Castle Peak Road, Tsuen Wan |
| (76) | Ho Fai Garden Block 2 | Ho Fai Commercial Centre (Block Two) | 222-224 Sai Lau Kok Road & 90-92 Castle Peak Road, Tsuen Wan |
| (77) | Tsuen Fung Centre | Tsuen Fung Centre | 138-168 Sai Lau Kok Road and<br>144-172 Castle Peak Road, Tsuen Wan |
| (78) | Waldorf Centre | Waldorf Centre | 170-184 Sai Lau Kok Road |
| (79) | Tsuen Cheong Centre Cheong On Building | Tsuen Cheong Centre | 186-216 Sai Lau Kok Road |
| (80) | Tsuen Cheong Centre Cheong Ning Building | Tsuen Cheong Centre | 186-216 Sai Lau Kok Road |
| (81) | Tsuen Wan Plaza | Tsuen Wan Plaza | 4-30 Tai Pa Street |

| | Name of development | Name of mall | Address |
|---|---|---|---|
| (82) | Nan Fung Centre | Nan Fung Centre | 264-298 Castle Peak Road, Tsuen Wan & 64-98 Sai Lau Kok Road |
| (83) | Tsuen Kam Centre | Tsuen Kam Centre | 328-350 Castle Peak Road, Tsuen Wan |
| (84) | The Dynasty | Citywalk 2 | 18 Yeung Uk Road |
| (85) | Parc City | Nina Mall 2 | 98 Tai Ho Road |
| | **Tuen Mun** | | |
| (86) | Oceania Heights | Oceania Heights | 2 Hoi Chu Road |
| (87) | Nerine Cove | Nerine Cove | 23 Hang Fu Street |
| (88) | Tuen Mun Parklane Square | Tuen Mun Parklane Square | 2 Tuen Hi Road |
| (89) | Pierhead Garden | Ocean Walk | 168-236 Wu Chui Road |
| (90) | Tuen Mun Town Plaza (Phase I) | tmtplaza | 1 Tuen Shing Street, 1 Tuen Shun Street, 3 Tuen Lung Street & 2 Tuen Yan Street |
| (91) | Tuen Mun Town Plaza (Phase II) | tmtplaza | 3 Tuen Lung Street |
| (92) | Tuen Mun Town Plaza (Phase III) | tmtplaza | 2 Tuen Yan Street |
| (93) | The Trend Plaza | Trend Plaza | 2 Tuen Lung Street |
| (94) | New Town Mansion | New Town Commercial Arcade | 2 Tuen Lee Street |
| (95) | Waldorf Garden | Waldorf Shopping Centre | 1 Tuen Lee Street |
| (96) | Kam Wah Garden | Kam Wah Garden | 1 Tuen Lung Street |
| (97) | Century Gateway | V City | 83 Tuen Mun Heung Sze Wui Road |

| | Name of development | Name of mall | Address |
|---|---|---|---|
| | **Yuen Long** | | |
| (98) | Sun Yuen Long Centre | Yoho Mall II | 8 Long Yat Road |
| (99) | Yoho Midtown | Yoho Mall I | 9 Yuen Lung Street, Kai Tei |
| (100) | Yuen Long Plaza | Yuen Long Plaza | 249-251 Castle Peak Road |
| | **Tai Po** | | |
| (101) | Tai Po Centre | Zone C, Tai Po Mega Mall | 3 On Pong Road |
| (102) | Tai Po Centre (Phase 5) | Zone D, Tai Po Mega Mall | 6 On Pong Road |
| (103) | Plover Cove Garden | Plover Cove Garden | 3 Plover Cove Road |
| (104) | Tai Po Centre (Phase 3) | Zone E, Tai Po Mega Mall | 3 Po Wu Lane |
| (105) | Jade Plaza | Jade Plaza | 3 On Chee Road |
| (106) | Fortune Plaza | Fortune Plaza | 4 On Chee Road |
| (107) | Uptown Plaza | Uptown Plaza | 9 Nam Wan Road |
| (108) | Tai Po Centre (Phase 2) | Zone B, Tai Po Mega Mall | 8-10 On Pong Road |
| (109) | Tai Po Centre (Phase 4) | Zone B, Tai Po Mega Mall | 8 On Pong Road |
| (110) | Tai Po Centre (Phase 1) | Zone A, Tai Po Mega Mall | 9 On Pong Road |
| (111) | Tai Po Plaza | Tai Po Plaza | 1 On Tai Road |
| | **North District** | | |
| (112) | Green Code | Green Code Plaza | 1 Ma Sik Road |
| (113) | Fanling Town Centre | Fanling Town Centre Shopping Arcade | 18 Fanling Station Road |
| (114) | Fanling Centre | Fanling Centre Shopping Arcade | 33 San Wan Road |

| | Name of development | Name of mall | Address |
|---|---|---|---|
| (115) | Sheung Shui Town Centre | Sheung Shui Town Centre Shopping Arcade | 9 Chi Cheong Road |
| (116) | Dawning Views | Dawning Views Shopping Plaza | 23 Yat Ming Road |
| (117) | Flora Plaza | Flora Plaza | 88 Pak Wo Road |
| (118) | Avon Park | Avon Mall | 15 Yat Ming Road |

* These two private developments are required to provide public pedestrian passages and atrium.